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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,022	11/27/2001	Steven O. Markel	2050.121US1	6138

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EXAMINER
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LONSBERRY, HUNTER B

ART UNIT	PAPER NUMBER
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2421

MAIL DATE	DELIVERY MODE
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04/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/997,022

**Applicant(s)**

MARKEL, STEVEN O.

**Examiner**

Hunter B. Lonsberry

**Art Unit**

2421

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Hunter B. Lonsberry/  
Primary Examiner, Art Unit 2421

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the specification does disclose re-enabling window controls which were previously enables, and that window controls can not be re-enables unless they were previously enabled. (page 8).

The Examiner respectfully disagrees. As a preliminary note, applicant's citations refer to both figures 5 and 6. Page 7, lines 9-21 disclose a display window which is employed to present an advertising message which may have some or all controls inactivated or disabled. In the embodiment corresponding to figure 5, a new window is created in step 504 and at step 508, the window controls are disabled. There is no discussion of a re-enablement. With regards to figure 6, page 7, lines 22-30, disclose when advertising is presented in a video window, the process may include a step to disable window controls. Figure 6 is a flow chart for presenting advertising in a video window with window controls disabled. Controls for the window are disabled at step 606. When the advertising is completed, the video window is returned to its previous size and window controls may be re-enabled. It is unclear to the examiner if the window controls were ever initially enabled, given applicant's disclosure that windows controls were initially enabled given applicant's disclosure of "...employing an advertising window that is "on top" of all other windows and cannot be easily be closed, minimized, resized, or obscured (page 6, lines 3-6) and that if a user attempts to close, obscure, or reduce the size of the advertising window, the streaming presentation may be terminated or the ad window opens up a new window and presents the advertising anew (page 8, lines 1-7)

Applicant argues that in the prior response applicant explicitly disclosed claims 7,16 and 19 by pointing out that video windows can be manipulated using a variety of controls, that one of these controls may be a resize corner 106 control, that some or all of the controls including the resize corner control 106 can be disabled so that the window may not easily be resized, and that the disabled controls, including a window sizing control can be re-enabled, and supported by applicant's citations, with respect to claim 24, that one of ordinary skill in the art would easily understand from the Application how a display window could not be resized for a predetermined amount of time. (page 9).

The Examiner notes while making the above points in the previous response applicant did not point out which features corresponded to each claim. Please see the discussion above. The Examiner further notes per page 8, it appears that even if the controls are disabled, the Examiner can in fact resize the window, though doing so results in the streaming video being terminated, or opening a new advertising window (pages 1-8).

Applicant argues that Kanter's teachings of a window of which a user has no control over is not the same as disabling at least one previous-enabled size control function of a video presentation window. (page 10) To be previously enabled, means that the window controls were enabled prior to being disabled. Thus the mere fact that a user has no control over a window size for example provides no indication whatsoever as to whether the window controls were previously enabled. (page 11).

The Examiner notes that this appears to mirror applicant's system. Even if for the sake of argument that Applicant's system allows for windows with window controls which are initially enabled, and are subsequently disabled, that would mean that for some period of time, even if it is infinitesimally small, a user could in fact resize a window prior to the controls being disabled. If that were to occur, that would run contrary to applicant's system in which allowing a user to resize content is considered detrimental in terms of forcing a viewer to watch advertising. It appears in Kanter that window 18 is a window in which controls are disabled which is functionally equivalent to at least one previously enabled, size control function of the display window is disabled given support in applicant's specification as discussed in the 112 rejection.

/Hunter B. Lonsberry/ Primary Examiner Art Unit 2421